

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FCC 16M-01  
10489

In the Matter of	)	EB Docket No. 03-152
	)	
<b>WILLIAM L. ZAWILA</b>	)	Facility ID No. 72672
	)	
Permitted of FM Station KNGS, Coalinga, California	)	
	)	
<b>AVENAL EDUCATIONAL SERVICES, INC.</b>	)	Facility ID No. 3365
	)	
Permittee of FM Station KAAX Avenal, California	)	
	)	
<b>CENTRAL VALLEY EDUCATIONAL SERVICES, INC.</b>	)	Facility ID No. 9993
	)	
Permittee of FM Station KAJP, Firebaugh, California	)	
	)	
<b>H. L. CHARLES D/B/A FORD CITY BROADCASTING</b>	)	Facility ID No. 22030
	)	
Permittee of FM Station KZPE, Ford City, California	)	
	)	
<b>LINDA WARE D/B/A LINDSAY BROADCASTING</b>	)	Facility ID No. 37725
	)	
Licensee of FM Station KZPO, Lindsay, California	)	
	)	
In re Application of	)	
	)	
<b>WESTERN PACIFIC BROADCASTING, INC.</b>	)	File No. BR-19970804YJ
	)	Facility ID No. 71936
For Renewal of License for AM Station KKFO, Coalinga, California	)	

**MEMORANDUM OPINION AND ORDER**

**Issued:** January 12, 2016

**Released:** January 12, 2016

## Background

1. Following a lengthy phone conference, the Presiding Judge issued Order, FCC 15M-21 on June 4, 2015. The parties were instructed to seriously consider entering into a consent agreement for the disposition of authorization for Station KAAX (Avenal) and KYAF (Central Valley), as well as issues regarding forfeiture and any or all other issues set to be litigated.<sup>1</sup> Such efforts failed. So on June 16, 2015, the Enforcement Bureau (Bureau) filed a motion for the addition of an Issue regarding the ownership and control of Avenal Educational Service, Inc. (Avenal) and Central Valley Educational Services, Inc. (Central Valley), the respective permittees of Non Commercial Educational (NCE) Stations KAAX (FM) and KYAF (FM). The Bureau now seeks the addition of Issues to determine Avenal and Central Valley's ownership and control because these are of decisional importance to Issues designated for hearing.<sup>2</sup>

2. The Bureau also seeks to add Issues to determine whether Avenal and Central Valley were qualified applicants at the time they filed their respective applications for Stations KAAX (FM) and KYAF (FM), questions also of decisional importance to the Issues already set to be heard.<sup>3</sup>

## The Ownership Issue

3. On March 19, 2015, the Presiding Judge ordered William L. Zawila and Verne J. White to submit the evidence that establishes the owners, officers, and any other individuals who control the operations of Avenal and Central Valley.<sup>4</sup> The Presiding Judge's assumption was a reasonable one, *i.e.*, that FCC permittees and licensees are best able to prove ownership of the broadcast assets for which they are responsible. After review of Zawila's and White's reports,<sup>5</sup> the Bureau finds that the questions of ownership and/or control of Avenal and Central Valley remain to be determined. The Bureau noted in its Comments Pursuant to *Orders*, FCC 15M-11 and FCC 15M-17 that neither Mr. Zawila's nor Mr. White's pleadings and papers affirmatively establish ownership and/or control of either the Avenal corporation or the Central Valley corporation, the form these registrants chose to ask the Commission for authorizations.<sup>6</sup> The Bureau even notes that "Commission records likewise failed to illuminate the questions." *Id.*

4. It warrants emphasis here that questions of ownership and control over Avenal and Central Valley are central to context for the Issues designated for hearing.<sup>7</sup> Clearly, there must be answers to questions of who had and has authority to make representations on behalf of Avenal and Central Valley concerning construction and operation of Stations KAAX (FM) and KYAF (FM)? And who was and is responsible for ensuring that Avenal and Central Valley comply with Commission rules with regard to construction and operations? *See* Issues 113(a) – (e) designated in the *HDO*.

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<sup>1</sup> *See Order*, FCC 15M-21 (rel. June 4, 2015).

<sup>2</sup> *William L. Zawila et al., Order to Show cause, Notice of Opportunity for Hearing, and Hearing Designation Order*, FCC 03-158, 18 FCC Rcd 14939, 14971 (July 16, 2003) (*HDO*).

<sup>3</sup> According to the Enforcement Bureau, based on a review of the current filings, it appears that these questions are not being considered by the Media Bureau.

<sup>4</sup> *See Order*, FCC 15M-11 (rel. March 19, 2015).

<sup>5</sup> *See* [Zawila's] Status Report regarding Verne J. White and Ownership and Control of KAAX and KYAF (Formerly KAJP), filed Apr. 7, 2015 (*Zawila's Status Report*); [White's] Evidence Regarding Ownership, filed May 4, 2015 (*White's Status Report*).

<sup>6</sup> *See* Enforcement Bureau's Comments Pursuant To *Orders*, FCC 15M-11 and FCC 15M-17, filed May 22, 2015.

<sup>7</sup> *See Order*, FCC 15M-11 (rel. March 19, 2015) at 2.

## Eligibility Issue

5. The Bureau also advances additional questions of whether Avenal and/or Central Valley were or were not qualified to hold permits for Stations KAAX (FM) or KYAF (FM) at the time they submitted their respective applications. On a non-contested point, the Bureau substantiates through the Consolidated Database System (CDBS) that Stations KAAX (FM) and KYAF (FM) are non-commercial educational stations.<sup>8</sup> Such Stations are regulated under Section 73.503 of the Rules,<sup>9</sup> which requires that “a noncommercial educational FM broadcast station will be used for the advancement of an educational program.”<sup>10</sup> It is established that an applicant for an NCE FM station governed under Section 73.503 “must certify its eligibility to own and operate such station *at the time its files its application*.”<sup>11</sup> (Emphasis added.) Such applicants must “be incorporated or otherwise organized in a form recognized under state law *at the time of filing*” in order to qualify for the NCE FM license.<sup>12</sup> (Emphasis added.) Both Zawila and White accept that Avenal and Central Valley are California corporations.<sup>13</sup> For either entity to qualify to apply for and hold NCE FM licenses, they must be organized in a form recognized under California law at the time they filed their respective applications, and this record contains evidence to the contrary. Therefore, Zawila and White must be put to the test of proving that at the time of application filing, Avenal and Central were *bona fide* corporate entities.

6. Neither Zawila nor White dispute that Avenal filed its applications for NCE Station KAAX (FM) in 1989.<sup>14</sup> But it appears evident that Avenal was not incorporated until 1999, 10 years after making application. Zawila’s application of 1989 included Avenal’s Articles of Incorporation, which are also dated ten years later, January 22, 1999.<sup>15</sup> Those disparities of dates need a convincing explanation by Zawila. Also, under California corporate law, a corporation’s existence begins only when its articles of incorporation are filed with California’s Secretary of State.<sup>16</sup> A certified copy of a company’s articles of incorporation is conclusive evidence of the company’s formation, and *prima facie* evidence of its corporate existence.<sup>17</sup> Therefore, Avenal could not have been recognized as a corporation organized under California law until January 22, 1999, at the earliest, although erroneously it represented to the Commission that it was a

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<sup>8</sup> See, e.g., Enforcement Bureau’s Status Report, filed Nov. 7, 2014 at 2 (EB’s Status Report).

<sup>9</sup> See 47 C.F.R. §73.503.

<sup>10</sup> *Id.* at §73.503(a).

<sup>11</sup> *Hammond Environmental and Educational Community Svcs.*, 25 FCC Rcd 12804, 12807 (Sept. 10, 2010) (emphasis added) (citation omitted).

<sup>12</sup> *Applications For Review of Decision Regarding Six Applicants For New Low Power FM Stations*. Memorandum Opinion and Order, 28 FCC Rcd 13390, 13394 (Aug. 23, 2013); see *Hope Radio of Rolla, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 7754, 7754 (May 14, 2013) (recognizing that to be eligible to hold an authorization for an NCE service, the applicant “must be a public agency or non-profit private foundation, corporation, or association that is recognized by the laws of the state in which it proposes to operate at the time it submits its application”); *WTL Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2475, 2478 (Feb. 8, 2008) (dismissing application for NCE station because the applicant was not incorporated as of the date on which it filed its application); *Sonido Internacional Cristiano, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2444, 2448-49 (Feb. 8, 2008) (dismissing application for NCE station because the applicant was not incorporated as of the date on which it filed the application).

<sup>13</sup> See, e.g., Zawila’s Status Report at Exhibit 4 at 3-4; White’s Status Report, Declaration of Verne J. White at 1-2 and Attachments C and G.

<sup>14</sup> See, e.g., Zawila’s Status Report at Exhibit 1, ¶ 2; White’s Status Report Declaration of Verne J. White at 2.

<sup>15</sup> See, e.g., Zawila’s Status Report at Exhibit A to Exhibit 4, thereto, entitled “Articles of Incorporation of Avenal Educational Services, Inc.”

<sup>16</sup> See Cal. Corp. Code §§ 200 (a), (c).

<sup>17</sup> See Cal. Corp. Code § 209.

corporation in its application of 1989. White states under penalty of perjury that Avenal was not incorporated until March 5, 1999.<sup>18</sup> If Avenal was not incorporated, or if it was otherwise organized in a form not recognized under California law at the time it filed its application for KAAX (FM), it was not a qualified applicant. If that was the case, Avenal should not have been granted its permit for KAAZ (FM). Avenal's non-qualification at the date of application may render moot Issues relating to Avenal's responsibilities for the construction and operation of KAAX (FM). But such conduct is not moot if it is shown that Avenal lacked candor or misrepresented itself to the Commission as a corporate applicant in 1989, and as a corporate licensee thereafter until 1999.

7. The same *scenario* applies to Central Valley's permit for NCE Station KYAF (FM). Zawila and White agree that Central Valley filed its application for NCE Station KYAF (FM) on October 17, 1998.<sup>19</sup> Commission records confirm that Central Valley's application was received by the Commission on that date.<sup>20</sup> Yet, the record also reflects that Central Valley was not recognized as a California corporation until 2001. Zawila's recent Status Report provides Central Valley's Articles of Incorporation dated January 26, 2001.<sup>21</sup> Mr. White represents that Central Valley was incorporated in California on January 29, 2011.<sup>22</sup> If Central Valley was not incorporated under California law at the time it erroneously filed its application for NCE Station KYAF (FM), it was not a qualified applicant and Central Valley should never have been granted a Commission permit for KYAF (FM). Issues designated alleging Central Valley violated of its responsibilities for the construction and operation of YAF (FM, might become moot. But there remain questions of demeanor and affirmative misrepresentation to be heard, as in the case of Avenal.

8. The factual record concerning Avenal's and Central Valley's corporate status at the time their applications were filed is clear, concise, conceded and undisputed. No additional discovery should be needed in order to submit for decision the factual and legal question of whether Avenal and Central Valley were qualified when applications were filed. However, a full account of the facts and circumstances of disparate dates of filings and incorporating and related issues of lack of demeanor and misrepresentation will be required. Thus, discovery on qualification is needed.

9. As a result of the foregoing, the Presiding Judge will add Issues as to (a) ownership and control of Avenal and Central Valley, and (b) whether Avenal and Central Valley were qualified applicants at the time applications were filed by Zawila and White for NCE Stations KAAX (FM) and KYAF (FM); and (c) whether Zawila and/or White lacks demeanor or misrepresented facts of their qualifications for holding Commission authorizations; and (d) whether under the circumstances of proof of the above issues, an order of forfeiture should be issued against Zawila and/or White for willfully violating §75.503(a) of the Commission rules.<sup>23</sup>

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<sup>18</sup> See White Status Report, Declaration of Verne J. White at 2 and Attachment G.

<sup>19</sup> See Zawila's Status Report at Exhibit 1, ¶2; White's Status Report at Declaration of Verne J. White at 1.

<sup>20</sup> See original application for NCE station KYAF, dated October 13, 1998, submitted by Central Valley, attached hereto as Exhibit 1.

<sup>21</sup> See Zawila's Status Report at Exhibit A to Exhibit 4, thereto entitled "Articles of Incorporation of Central Valley Educational Services, Inc."

<sup>22</sup> See White's Status Report at Declaration of Verne J. White at 1 and Attachment C thereto.

<sup>23</sup> 47 CFR §73.503.

## Rulings

On **January 14, 2016**, the Enforcement Bureau shall file, serve and submit its requested issues appropriately formatted.

Document and Deposition discovery shall commence on **January 19, 2016**, including requests to admit, requests for documents, and depositions.<sup>24</sup>

Interim Status Reports shall be exchanged, submitted and filed on **February 12, 2016**.

Motions to Compel shall be used only to resolve any unresolved discovery issues which shall be filed, served, and provided to the Presiding Judge on **February 17, 2016**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION<sup>25</sup>



Richard L. Sippel  
Chief Administrative Law Judge

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<sup>24</sup> Interrogatories shall not be needed if Zawila successfully completes the set of interrogatories previously filed and served July 28, 2015. For an account of state of Bureau's discovery *see Order FCC 15M-33*, released December 23, 2015, at pages 3-5 and 7 (compelling Zawila answers). Second Document Requests should also be minimal. *Id.*

<sup>25</sup> Courtesy copies of this Memorandum Opinion and Order were emailed on issuance to counsel for the Enforcement Bureau, Mr. Zawila, and Mr. Couzens.